Doing this I am impelled to follow decided reported cases. In so doing I have had regard to Counsel for the plaintiff-appellant's observation that a contrary view point would be at variance with nearly every reported English case on the subject, although this situation would not disturb me had I found it necessary to decide otherwise. I have read and considered many cases, and find that in those where the Courts have found a contrary intention, this has appeared in no unmistakable terms. The question I have to answer is whether there is anything in the New Ordinance which takes away the right of a landlord who has strictly complied with the Old Ordinance (*National Real Estate & Finance Co. v. Hassan*[13]).

I do not find that the Court should construe the New Ordinance as interfering with the appellant's right acquired unless it is clear that a contrary intention is indicated. (*Moakes v. Blackwell Colliery Co.*[6]). I agree that the New Ordinance changes the respective relationship and status of landlord and tenant, but there is not language sufficiently plain and clear to remove the prima facie presumption that the position of litigants in proceedings in progress should be disturbed.

In consequence the appeal is allowed. The judgment of the Court below in respect of paragraphs 1 and 3 of the statement of claim is set aside, and the action is remitted to the Court below with the direction that the proceedings be continued and determined in accordance with the provisions of the Increase of Rent (Restriction) Ordinance, 1939 (since repealed).

As regards costs, the appellant has succeeded, but as owing to a wrong assumption that the section 13 of the Interpretation and General Clauses Ordinance, 1948, was similar in all respects with section 5 of the Interpretation Ordinance of the Straits Settlements, which wrong assumption caused the re-opening of argument, the hearing occupied considerably longer than the day allocated, the appellant shall not enjoy costs assessed for a hearing exceeding one day.

I should conclude by adding that the whole of Counsel's argument is on record having been taken down by a stenographer whose services were made available by Counsel for the plaintiff-appellant and were much appreciated.

*Appeal Allowed.*

## CHEW POH CHOO (f) v. CHUA KWONG POW.

[Orig. Civil Juris. (Laville, J.) May 26, 1948]
[J.B. — Originating Motion No. 10 of 1948]

*Leases and Tenancies (Dispossessed Persons) Board Rules, r. 8 — Appeals from the Board — Appeal out of time — Special circumstances — Civil Procedure Rules, Order VI made under Civil Procedure Code, s. 531.*

In this case an order for possession in favour of the Applicant — to be made effective within four months of the date of the order — was made on 7/12/47 by the Leases and Tenancies (Dispossessed) Board, Johore Bahru. The Respondent, however, continued occupation, and it was not until the 6th of May 1948, when he was served with a summons issued by the Applicant, that he applied for leave to appeal out of time and for a stay of execution in regard to the ejectment order until after the hearing of the appeal on the grounds, (1) that he failed to see his counsel in time and was misinformed by that counsel's clerk that no appeal lay from the order of the Board; (2) that a point of law arose.

**Held,** (1) that a mistake by counsel (and a fortiori his clerk) as to the effect of a rule is not ground for granting special leave to appeal and does not amount to special circumstances; (2) the fact that a point of law may be raised on appeal does not go to the question of whether an appeal out of time could be allowed and does not amount to a special circumstance.

*Case referred to :—*

(1) *Coles and Ravenshear,* 1 K.B. (1907) pp 5 — 8.

ORIGINATING MOTION.

*C. H. Koh* for Applicant.

*A. N. Mitra* for Respondent.

**Laville, J.** : — On 7.12.47, after hearing both parties, the Leases and Tenancies (Dispossessed Persons) Board for the Johore Bahru Town Board Area made an order for possession of 113, Jalan Trus, Johore Bahru, in favour of Chew Poh Choo (f), the order to be effective within 4 months of the date of the order as against Chua Kwong Pow the occupant.

On 16th December, 1947, Chew Poh Choo by letter notified Chua Kwong Pow that she would go into possession as soon as the premises were surrendered in the terms of the order and that alterations or damage made or done by the occupant must be put right before that date. No reply was received to this letter and on 4th April, 1948, a similar letter was again sent to Chua Kwong Pow without effect, and he continued in occupation.

On 6th May, 1948, Chua Kwong Pow was served with a summons issued by Chew Poh Choo under section 5 (4) of the Ordinance to appear on 22nd May in the District Court, and it was only after receipt of this summons that Chua Kwong Pow instructed

counsel to apply for leave to appeal out of time and for a stay of execution in regard to the ejectment order till after the hearing of the appeal. This motion was was filed on 20th May, a Thursday and a half holiday, and hearing was fixed for Saturday, the next working day, and also the day on which the District Court summons was to be heard.

In the affidavit supporting the motion Chua Kwong Pow alleges that his reason for not entering an appeal in due time was that he failed to see his counsel in time and was misinformed by that counsel's clerk that no appeal lay from the order of the Board, and secondly that he is now instructed by new counsel he briefed after receiving the District Court summons that a point of law arises for decision in regard to the order of the Board.

As to the first ground taken, there is nothing but the allegation of the petitioner to rely on. The dates of his attempts to consult his previous counsel are not given nor is there any supporting affidavit by the clerk corroborating petitioner's story. It is laid down in *Coles* and *Ravenshear*[1] that a mistake by counsel (and a *fortiori* his clerk) as to the effect of a rule is not good ground for granting special leave to appeal and does not amount to special circumstances. I agree with the ruling of the Court that a successful party has a vested right in an order of Court in his favour and should not be deprived of an advantage given him by the rules *unless there has been on his part some conduct raising an equity against him or in a case of inevitable accident.* In this case Chew Poh Choo has been guilty of no laches; she at once gave notice she would go into occupation on expiry of the time granted in the order of the Board, and also sent a reminder shortly before due date. Chua Kwong Pow, instead of taking advice of counsel, was satisfied with that of a clerk, and in the face of the letters received from Chew Poh Choo took no action to prosecute his appeal. In my view there is no substance in this ground of his application for extension of time.

His second ground is that a point of law arises for decision. In this regard it may be noted that this point could have been taken before the Board and the Court is not informed as to whether it was so taken or not, and the Court must assume that it was so taken, and that if an appeal had been lodged it would have formed one of the grounds of appeal. In my view the fact that a point of law may be raised on appeal does not go to the question of whether an appeal out of time should be allowed. It does not amount to a special circumstance in that most appeals are based on points of law or fact.

The motion contemplates that the appeal should should be made under the provisions of Order VI of the Civil Procedure Rules and section 531 of the Civil Procedure Code, but in my view these sections do not apply. It is laid down in the Leases and Tenancies (Dispossessed Persons) Board Rules, G.N. 4858 of 17th July, 1947, Rule 8, that in appeals from the Board a Notice of Appeal must be filed within 4 days of the order appealed against, and that thereafter the practice and procedure regulating appeals from the Lower Civil Court to the Supreme Court shall apply. This precludes any recourse to the Civil Procedure Code or any other Code until such notice has been filed in the Board's office and shuts out any application for leave to appeal out of time, except one based on the Supreme Court's inherent and unlimited power to make such orders as may be necessary for the ends of justice. That power must be used only in circumstances in which it is crystal clear that grave injustice would follow if it was not used and in this case it is by no means clear.

For these reasons no order for extension of time will be made and the motion will be dismissed with costs.

*Motion Dismissed.*

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## M. M. ALLY & CO. v. CHELLAMAH (f).

[App. Civil Juris. (Russell, J.) June 3, 1948]
[Selangor — C.A. No. 17 of 1947]

*Courts (Restriction of Civil Jurisdiction) Ordinance 1946, s. 3 (c),(d),(e) and Courts (Restriction of Civil Jurisdiction) (Amendment) Ordinance 1947, s. 2 (2)(d) — Whether Court has jurisdiction to hear case — What constitutes a valid tender — Contract Enactment (Cap. 52) s. 38.*

In this case the Appellants appealed against the decision of the learned trial Judge on two grounds:— (1) that the learned District Judge had no jurisdiction to hear and determine the suit; (2) that a letter from their solicitors dated the 28th November 1946 offering to send a money order for $50/- and a cheque for $125/- on the Respondent undertaking to issue receipts for payment thereof was a valid tender.

**Held,** (1) that the provisions of paragraph (d) of sub-section (2) of Section 2 of the Courts (Restriction of Civil Jurisdiction) (Amendment) Ordinance 1947 apply and the learned District Judge was not barred from hearing and determining the suit; (2) that there was no valid tender of the rent in this case as a mere offer by post to pay an amount due unaccompanied by any money is not a valid tender.